

In the Matter of License No. 176224

Issued to: JAMES J. GALVANI

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JAMES J. GALVANI

This appeal comes before me in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 18, 20 and 24 May, 1949, Appellant appeared before an Examiner of the United States Coast Guard at New York City to answer charges of "inattention to duty" and "negligence," both of which charges were based on the same incident. The charge of "inattention to duty" is supported by a specification alleging that while Appellant was serving as Master on board the American SS SANFORD B. DOLE, under authority of License No. 176224, he did, on or about 16 April, 1949, while said vessel was steaming from Anguila Island for Puerto Sagua La Grande, steer an improper course, as a result of which the vessel ran aground. The charge of "negligence" is supported by a specification alleging that, while serving as above and on the same date, Appellant did, while said vessel was steaming towards Puerto Sagua La Grande and when the vessel was approaching the coast of Cuba, navigate and/or pilot said vessel in a negligent manner, as a result of which the vessel ran aground.

At the hearing, Appellant was informed as to the nature of the proceeding, the rights to which he was entitled and the possible outcome of the hearing. Appellant was represented by counsel of his own choice and he entered a plea of "not guilty" to each of the charges and specifications.

After the Investigating Officer had introduced in evidence the testimony of the Second Mate, who was on watch at the time of the grounding, and a chart of the North Coast of Cuba, he rested his case. Appellant was the only witness to testify in his own behalf. Certain stipulations were made as to what the helmsman's testimony would have been if he had appeared as a witness.

When both parties had completed their arguments, the Examiner made his findings of fact and concluded that the charge and specification alleging "negligence" had been "proved." The charge of "inattention to duty" and the supporting specification were dismissed. Based on his findings and conclusions, the Examiner entered an order suspending Appellant's License No. 176224, and all other valid licenses and documents issued to him by the Coast Guard, for a period of six months; one month to be an outright suspension and the balance of five months not to be effective provided no charge is proved against

Appellant for acts committed within six months from 24 June, 1949.

On appeal, Appellant urges that:

- Point 1. The finding that the second charge ("negligence") was proved was without support in the evidence.
- A. The first charge and specification were dismissed because it was found that the Appellant did not steer an improper course. Therefore, Appellant was not guilty of the second specification which alleged negligent navigation and piloting.
 - B. There is no testimony in the record which contradicts the fact that both the Appellant and the Second Mate were on the bridge taking every precaution possible when the vessel grounded.
 - C. The coast where the vessel went aground is heavily shoaled making a landfall extremely difficult. The brilliant sun accentuated this situation.
- Point 2. The penalty and sentence is too severe in view of the facts of the accident and the surrounding mitigating circumstances. The order should be made wholly probationary.
- A. Appellant's record is unblemished over a period of many years at sea and a strong letter of recommendation by the corporation owning the SANFORD B. DOLE was introduced in evidence.
 - B. The steamship company operators make a definite distinction between outright suspensions of an officer's license and probationary suspension periods.

Appearance: Benjamin B. Sterling, Esq. of New York City
By Marvin Schwartz, Esq.

Having carefully studied the Record in this case, I state my

FINDINGS OF FACT

On or about 16 April, 1949, Appellant was serving as Master of the American SS SANFORD B. DOLE, under authority of License No. 176224, while said vessel was enroute from New York toward Puerto Sagua La Grande, Cuba.

On the morning of 16 April, 1949, said vessel was on a southeasterly course in the Santaren Channel approaching Anguila Island. The ship was bucking a heavy westerly set of the current so that the average speed from 1200 on 15 April, 1949, to 1200 on 16 April, 1949, was 10.5 knots, although she was proceeding at 72 RPM's which would normally produce a speed of about eleven knots. The sailing directions for this area indicate that there is a weak current to northward in the Santaren Channel.

At 1200 on this date, the Second Mate relieved the Third Mate of the watch while the ship was still underway in the Santaren Channel. The Third Mate instructed the Second Mate to take a four-point bearing on Anguila Island lighthouse as they passed it abeam to starboard. The ship was then making 72 RPM's. The helmsman was the only other man on deck watch with the Second Mate and Appellant was on the bridge. On this vessel, it was customary not to have a lookout watch posted during daylight hours in clear weather. The weather was clear, the sea moderate, the wind light and the visibility excellent except for a strong glare when looking into the sun.

The four-point bearing was taken by the Second Mate and it showed that the ship was approximately 1.6 miles distant from Anguila Island at 1233. In setting the course to be steered from this point, Appellant testified he took into consideration the facts that they had encountered a westerly set in the Santaren Channel in the morning; that a slight current to the westward in Nicholas Channel was indicated in the sailing directions; that his past experience in this area led him to believe there would be a westerly set; that Anguila Island lies two miles southeast of its charted position; and that there was a gyro-compass error of approximately one degree westerly. Based on these factors, Appellant expected to make good a course of 224° True by steering 220° PGC, 219° True. Allowing for ten percent slip because the ship was light, Appellant estimated that the ship would make good 10.7 knots at 72 RPM's. Considering the westerly set, he estimated that the speed of advance would be increased from 10.7 to 11 knots.

Based on the above estimates, Appellant drew a pencil course line of 224° True on the chart, in the chartroom, which was being used for navigating on this leg of the voyage. (See Investigating Officer's Exhibit A.) But although Appellant told the Second Mate that he was taking into consideration the inaccurate location of Anguila Island on the chart, there is no indication that this was done in laying down the course expected to be made good. Except for the latter factor, a course made good of 224° True would have put the ship between the entrance buoys of the channel to Puerto Sagua La Grande, one mile to eastward of El Cristo lighthouse.

At 1233 on orders from the Appellant who was on the flying bridge, the Second Mate changed course to 219° True (220° PGC) and took departure from abeam of the southern point of Anguila Island, distant 1.6 miles for Puerto Sagua La Grande, proceeding across Nicholas Channel. The vessel's destination was approximately forty miles distant from the point of departure. The only lighthouse within six miles of the channel entrance was the fifty-foot El Cristo lighthouse.

At the time of the course change, Appellant instructed the Second Mate to keep a good lookout, check the course, use the fathometer and to let him know when a landfall was made. After the change of course had been completed, Appellant left the bridge and went to his office behind the chartroom.

The Second Mate was standing his watch on the flying bridge and the ship was being steered from there. Both the Mate and the helmsman had an unobstructed view ahead and to both sides but the bright sun was almost dead ahead of the ship on the new course. The navigation bridge was approximately ten feet below the flying bridge. It was necessary to go below to the navigation bridge and through the wheelhouse to the chartroom in order to operate the fathometer or look at

the chart being used. It took about half a minute to go from the flying bridge to the chartroom.

Shortly after the course change, the Second Mate followed Appellant's instruction to check the course by going below to the chartroom and drawing a blue course line of 219° True on the same chart on which Appellant had put the course line of 224° True. The Second Mate erroneously started his course from the same plotted point of departure as Appellant's course line. Both of them failed to take into consideration the fact that the plotted point of departure was not correct because it was based on the inaccurately charted position of Anguila Island.

At 1411, the discharge of ballast was completed. The ship now high in the water since there was no cargo aboard. It was drawing 14'2" aft and 5'6" forward.

At approximately 1430, the Second Mate took an azimuth and found the gyro error to be 1.4 degrees westerly. Shortly afterwards, the Second Mate sighted the coast of Cuba and reported the landfall to the Appellant. The latter went at once to the flying bridge and used his binoculars in an attempt to ascertain their location. He remained on the flying bridge, keeping a watch up ahead until the time of the grounding, except for several trips to the chartroom to check the fathometer. The Second Mate had no sun goggles or polaroid glasses since there were none on board.

At about 1500, the Second Mate began taking soundings on the fathometer since the coast of Cuba is rimmed by shoal water all along the north coast in this area. He checked the fathometer at least three times before the grounding occurred but each time it showed no bottom.

Appellant did not know what part of the Cuban coast they had sighted. Since neither the El Cristo lighthouse nor any other navigational aids were visible, he assumed that they had made good the true course of 219° at a speed of 11 knots. Hence, he thought the nearest land was farther away than it actually was and he ordered a course change to 259° True when the ship was about four miles from land. His intention was to move toward shore at an angle so as to still be outside of the shoals upon approaching the vicinity of the channel entrance. Upon the execution of the course change at 1509, the brilliant sun was on the port bow and its glare still impaired visibility to such an extent that it was difficult to identify objects ashore. The weather was still clear and visibility otherwise good.

No aids to navigation or landmarks were distinguishable up to the time of the grounding. As they proceeded closer to land, only the flat rocky land and trees could be seen ashore. Shortly before the grounding, several ships were sighted lying in an inlet dead ahead and there appeared to be an opening straight ahead leading to the pilot station at the lighthouse. At 1530, standby was rung up on the engine room telegraph but there was no change made in the speed from full ahead.

The ship ran aground at 1532, about six miles east of the channel entrance to Puerto Sagua La Grande and approximately an eighth of a mile inside the hundred fathom curve along the north coast of Cuba. Immediately before the grounding, both Appellant and the Second Mate were going up the ladder to the flying bridge from the navigation bridge. They had been checking the fathometer which still read no bottom. This had caused them to be away from the flying bridge for

a few minutes. While going up the ladder, the Second Mate noticed a change in the color of the water. He told Appellant and the latter rushed to the telegraph and pulled it to full astern as the ship ran aground. This was the first change of speed from full ahead since sometime prior to 1233 and there had been no change of course since 1509. The glare from the sun was still strong and on the port bow.

When the sun had gone down about three hours after the grounding, El Cristo lighthouse was sighted to the westward. A fix obtained by using the bearings of the lighthouse and the port of Isabela determined that the ship had gone aground at approximately 23° 00' 45" North latitude, 79° 52' West longitude. Appellant was able to back the ship off the shoal under her own power and they made port without assistance. There were no personnel injuries or loss of life and the damage to the vessel was slight.

It was stipulated that the helmsman steered a good course within one degree on each side of the two courses he had been ordered to steer since departure from Anguila Island. Accepting this, it is apparent that there was an easterly set, rather than a westerly one, in Nicholas Channel. The course actually made good, while steering on course 219° True, was about 214° True. Because of the erroneous departure point used by the Appellant and Second Mate, the course which should have been made good to arrive at the destination was 227° True instead of 224° True. Due to the easterly set, the speed of advance was approximately 12.5 knots while on course 219° True and about 12 knots on course 259° True.

OPINION

Appellant contends that the charge of "negligence" was found "proved" without support in the evidence because a completely interrelated charge and specification were dismissed (Point 1A); because the testimony concerning the precautions taken by Appellant was not contradicted (Point 1B); and because of the circumstances present which were adverse to accurate navigation. (Point 1C)

In these proceedings, it is required that the findings and conclusions be supported by substantial evidence (Administrative Procedure Act, section 7(c); 46 Code of Federal Regulations 137.21-5). Substantial evidence has been defined as:

"* * * evidence of such quality and weight as would be sufficient to justify a reasonable man in drawing the inference of fact that is sought to be sustained. (Cases cited.) * * * From the mere fact that the evidence permits two or more possible inferences, it does not necessarily follow that the evidence is not substantial and is not sufficient to sustain the jury's finding. To be substantial, the evidence need not point entirely in one direction." Baltimore and Ohio Railroad Co. v. Postom (C.C.A., D.C., 1949), 177 F. 2d 53.

And it means that the one weighing the evidence takes into consideration all the facts presented to him and all reasonable inferences, deductions and conclusions to be drawn therefrom and,

considering them in their entirety and relation to each other, arrives at a fixed conclusion. National Labor Relations Board v. Thompson Products, Inc. (C.C.A., 6th Cir., 1938), 97 F. 2d 13.

In this connection, it is worthy of note that the Supreme Court in United States v. Yellow Cab Co., et al. (decided 5 December, 1949, not yet reported) has stated:

"Only last term we accepted the view then advanced by the Government that for triers of fact totally to reject an opposed view impeaches neither their impartiality nor the propriety of their conclusions. We said,

'We are constrained to reject the court's conclusion that an objective finder of fact could not resolve all factual conflicts arising in a legal proceeding in favor of one litigant. The ordinary lawsuit, civil or criminal, normally depends for its resolution on which version of the facts in dispute is accepted by the triers of fact * * *. Labor Board v. Pittsburgh S.S. Co., 337 U.S. 56, 659.'"

With respect to Point 1A, I do not agree that the second charge and specification must necessarily be found "not proved" or dismissed simply because the first charge and specification were dismissed. The first charge is "inattention to duty" and alleges that Appellant steered an improper course while the ship was steaming from Anguila Island to Puerto Sagua La Grande. The evidence and arguments bring out that this charge and specification were intended to refer to the course of 219° True which was set upon taking departure from Anguila Island. The second charge was "negligence" and alleges that Appellant navigated and piloted the ship in a negligent manner while steaming towards Puerto Sagua La Grande. The evidence and arguments clearly establish that this charge and specification were directed at the handling of the vessel as it approached the north coast of Cuba. It is alleged in each specification that the acts performed resulted in the grounding of the ship. Due to the above differences in the significance of the two charges and supporting specifications, it becomes apparent that the dismissal of the first charge and specification does not mean that the second charge and specification must also fall.

In addition, the second specification is much broader than the first specification since it refers to the navigating and piloting of the vessel and the first specification simply alleges that an improper course was steered. Navigating and piloting a ship include such factors as speed and the use of equipment as well as the course being steered. Consequently, Appellant may be found guilty of negligent navigation even if it is established that he was not negligent in steering the course set by him.

Since the first charge and specification were dismissed by the Examiner, it is not appropriate to discuss herein the merits of the courses steered except insofar as they are related to the second charge and specification. And such dismissal does not exclude from consideration the acts on which the first charge and specification are based so long as these acts are also related to the second charge and specification.

Concerning Appellant's Point 1B, it may be conceded that the evidence as to the precautions taken by Appellant were not contradicted by any other evidence. Such precautions included taking bearings on Anguila Island, using the fathometer and remaining on the flying bridge practically all of the time after the landfall had been made. But it is not conceded that Appellant took every possible precaution and there are strong bases in evidence for inferences that Appellant did not exercise the degree of care required of him under the circumstances.

Appellant testified that although they had made a landfall approximately one hour before the grounding occurred, they did not pick up any landmarks or the El Cristo lighthouse up to the time of the grounding. Consequently, Appellant was definitely lost and every possible precaution should have been taken to guard against possible danger to the crew and ship. He stated on direct examination that the course of 219° True was carrying the ship directly toward an unknown shore (R. 29) but yet he was not prudent enough to reduce the speed of the ship from full ahead. He admitted that it was apparent that the change of course to 259° True would continue to bring them closer to land (R. 29) and still there was no attempt made to reduce the speed of the ship up to the time of the grounding. And this was after they had approached close enough to land to distinguish the flat rocky nature of the terrain and could see the trees ashore. Since they were completely lost and Appellant knew it, it was imperative for him to reduce the speed of the vessel considerably while so close to strange shores, but no such precaution was ever taken. In the case of The New York (1899), 175 U.S. 187, it was said:

"The lesson that steam vessels must stop their engines in the presence of danger, or even of anticipated danger, is a hard one to learn; but the failure to do so has been the cause of the condemnation of so many vessels that it would seem that these repeated admonitions must, ultimately, have some effect."

Another precaution which should have been exercised by Appellant, due to the extreme nature of the circumstances, was to direct the ship on such a course as would ultimately bring the ship within sight of its destination but, at the same time, a course which would eliminate all dangers so far as possible. As mentioned above, Appellant stated that the course of 259° True was taking the ship closer to shore. Also on direct examination, he admitted that in order to parallel the coast, he would have had to order a course change to approximately 290° True (R. 29). In view of the complete lack of information as to their location, such a course of action was expedient if it would be unlikely to lead the ship away from its objective. Since the El Cristo lighthouse is fifty feet high and had a visibility of approximately eighteen miles from the flying bridge of the ship, there is no way they could have stayed within sight of the flat rocky land and yet not have been able to see the lighthouse. In fact, it is difficult to understand why the lighthouse was not sighted before the grounding took place since it is less than seven miles from the place of the grounding. The bright sun could not have interfered with picking up the lighthouse since the former was on the port bow and the latter was on the starboard bow while the ship was on course 259° True.

If the ship had made good the course of 219° True at eleven knots as Appellant assumed had happened (R. 29), then the ship would have approached as close to the lighthouse as to the surrounding land when on the new course of 259° True. The fact that this did not occur should

reasonably have convinced a man of Appellant's experience that they had encountered a strong easterly set and, therefore, were far to eastward of their destination. This also should have indicated that a more drastic change of course was necessary.

If, at the time of the course change to 259° True, Appellant had reviewed his calculations on which the previous course of 219° True was predicated, he should then have discovered that he had not allowed for the inaccurately charted position of Anguila Island even though he knew about it at that prior time. This also would have induced Appellant to make a greater change of course than to 259° True.

Judging from the above, it is my conclusion that there were several different factors brought to Appellant's attention, as the ship approached the north coast of Cuba, which would have caused a reasonably prudent man with Appellant's sea experience to have changed the course of the ship somewhat more than to 259° True and to have reduced the speed of the vessel considerably.

As Appellant has mentioned, the north coast of Cuba is treacherous in this area because of the shoals, and the brilliant sun increased the danger of running aground. (Point 1C) If Appellant had taken the ship into the shoal area through no fault of his own, then it would be more likely that the ship had run aground due to these hazards and through no negligence on Appellant's part. But when the risk caused by the shoals and the sun were added to the difficulty to spot landmarks and complete lack of knowledge as to the ship's location, it is my opinion that the acuteness of the situation was enhanced to such an extent that it became imperative for Appellant to exercise every possible precaution to avoid the possibility of entering the shoal waters. The presence of the glaring sun only increased the necessity to proceed slowly, when lost and known to be in the vicinity of shoals, so as to be in a position to avoid suddenly discovered danger. The small amount of damage done when the ship ran aground at full speed ahead indicates that slowing the ship at some earlier time would have averted the grounding altogether. Admittedly, Appellant did not know that the ship was actually in the shoal area until the Second Mate warned him after it was too late, but he should have considered the possibility at least at the time they sighted several ships dead ahead. Even then, it might not have been too late to avoid the grounding if Appellant had acted accordingly.

Appellant also urges that if the order is not reversed, it should be modified to provide a wholly probationary suspension of Appellant's license because of the latter's unblemished record and the letter of recommendation contained in the record (Point 2A). Despite Appellant's clear record for many years at sea, it is my belief that the order imposed is not too severe. As pointed out, his long experience on ships should have caused Appellant to have fully recognized the dangers present and led him to take additional preventive measures. And a letter of recommendation cannot be given greater influence than an order resulting from a full and fair hearing of all the facts and circumstances involved.

Finally, Appellant requests that the order be made probationary because this would keep his record clear so far as the steamship company operators are concerned. Whether this be true or not, it is not an adequate basis for making any modification in the order of the Examiner.

CONCLUSION AND ORDER

The order of the Examiner dated 24 May, 1949, should be, and it is AFFIRMED.

J. F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 22nd day of Dec., 1949.